

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|                        |   |                       |
|------------------------|---|-----------------------|
| BMC SOFTWARE, INC.,    | § |                       |
|                        | § |                       |
| Plaintiff,             | § |                       |
| vs.                    | § | Case No. 4:17-cv-2254 |
|                        | § |                       |
| INTERNATIONAL BUSINESS | § |                       |
| MACHINES CORPORATION,  | § |                       |
|                        | § |                       |
| Defendant.             | § |                       |
|                        | § |                       |

**[PROPOSED] FINAL JUDGMENT**

This civil action was tried by United States District Judge Gray H. Miller from March 14, 2022 to March 24, 2022. For the reasons stated in detail in the Court’s Memorandum and Order Entering Findings of Fact and Conclusions of Law of \_\_\_\_\_, 2022 (ECF No. \_\_\_\_), the Court renders this Final Judgment.

It is ordered, adjudged, and decreed, and the Clerk of the Court is hereby directed to enter judgment in favor of Defendant International Business Machines Corporation (“IBM”) and against Plaintiff BMC Software, Inc. (“BMC”), as follows:

- (a) Final judgment is entered against BMC on all of its claims against IBM in this action, which claims are denied;
- (b) BMC shall take nothing on its claims against IBM, and all relief requested by BMC is denied;
- (c) Pursuant to paragraph 18 of the Master License Agreement (“MLA”) between BMC and IBM, IBM is the prevailing party in this action and is entitled to recover its reasonable and customary attorney’s fees and costs from BMC; and
- (d) IBM shall have and recover the following from BMC:

- (i) costs in an amount to be determined after judgment pursuant to Federal Rule of Civil Procedure 54(d)(1);
- (ii) reasonable and customary attorney's fees in an amount to be determined after judgment pursuant to Federal Rule of Civil Procedure 54(d)(2); and
- (iii) post-judgment interest on the amounts above at an annual rate of \_\_%<sup>[1]</sup>, compounded annually from the date this Final Judgment is entered until all amounts are paid in full.

As this Final Judgment adjudicates each and every claim, right and liability of each party with respect to this action, this judgment is final.

SIGNED on \_\_\_\_\_, 2022 at Houston, Texas.

\_\_\_\_\_  
Hon. Gray H. Miller

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<sup>1</sup> IBM respectfully requests that the Court enter the applicable post-judgment rate, which is available on the Court's website. *See* Post-Judgment Interest Rates - 2022, United States District & Bankruptcy Court, Southern District of Texas, *available at* <https://www.txs.uscourts.gov/page/post-judgment-interest-rates-2022>.